

ORIGINAL

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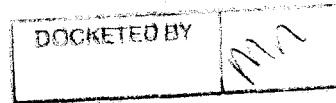
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AZ CORP COMMISSION  
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**COMMISSIONERS**

Gary Pierce, Chairman  
Paul Newman, Commissioner  
Brenda Burns, Commissioner  
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**Before the Arizona Corporation Commission**

J. Stephen Gehring, Bobby Jones, Lois  
Jones Private Citizens, Injured Parties,  
Complainants,

vs.

PAYSON WATER CO. INC./BROOKE  
UTILITIES INC.  
Respondents.

**DOCKET NO. W-03514A-12-0008**

**OBJECTION TO RESPONDENTS REPLY  
TO COMPLAINANTS' "SUPPLEMENT"  
(SECOND RESPONSE) AND OBJECTION TO  
RESPONDENT'S MOTION TO MODIFY  
SUBPOENA**

**NOW COMES**, the Complainants J. Stephen Gehring, Bobby Jones and Lois Jones, to object to Respondent's Reply to Complainants' "Second Response" (i. e. Supplement) and Objection to Respondents' Motion to Modify Subpoena submitted in support of their Motion to Deny, any modification of the Subpoena Decus Tecum.

Complainants' Motion the Commission and its Administrative Law Judge to compel Respondent's compliance with the Subpoena pursuant to Ariz. Rules of Civ. Pro., Rules 37(a), 45(c)(5)(B)(ii)(iii) and 45(f)(g) by issuing an Order to compel compliance or in the alternative to issue a Civil Arrest Warrant for failure to Comply.

Complainants' object to the Respondent's constant twisting and turning of words, word phrases and sentences to suit him self for the purpose to deviate from the real truth, facts and issues in these proceedings.

Complainants' particularly object to misrepresentations made by Respondent Hardcastle to mislead and confuse the Commission and its Administrative Law Judge to Modify the Subpoena to exclude vital and necessary discovery, documents and records related to the Augmentation Period where in fact water was hauled from the Town of Payson (TOP) to the MDC and EVP Systems and where the Customers of the MDC System were charged for water hauled to the EVP System from TOP and MDC.

- 1) On page 2, paragraph 4 of Complainants' "Response and Objection to Respondents Motion to Modify Subpoena." Complainants' objected to Respondent's objection to producing, documents, records or books (related to water hauled to the EVP System) pursuant to the requirements of the Subpoena based on ARCP, Rule 45(c)(5)(B) "because the rule cited does not exist." The Complainants were in error on the point that the rule did not exist;
- 2) In their Supplement to their Original Response, page 1, paragraph 2, Complainants' admitted they had objected to the issue [non-existence of Rule 45(c)(5)(B)] based on an older version of the Rule which indicated that Rule 45(c)(5)(B) did not exist. Upon reviewing a newer edition Complainants admitted that the Rule [45(c)(5)(B)] cited is correct (does exist) and withdrew their objection on the issue that is does not exist. Nothing more!
- 3) The Complainants did not and do not agree with the Respondent's objection to the Subpoena and his desire to Modify the Subpoena on the bases that any documents, records and books related to the EVP System are not relevant to the issues before the Commission. Respondents are concealing facts in documents and records that evidence Consumer Fraud.

The fact that the EVP and MDC Systems are separate systems is not grounds to modify the Subpoena.

All documentation and records related to the hauling of water during the Augmentation Period, to the MDC and EVP Systems (particularly the hauling logs and invoices of water hauled by Pearson Water/Pearson Transport and Martins Trucking Service to the EVP System from TOP and MDC) are and have become extremely relevant to the issues before the Commission, especially in light of the discrepancies found in the invoices and hauling logs related to water hauled to the MDC System.

The missing Invoices and hauling logs are extremely relevant to those issues and the Respondents must comply with the Subpoena and produce them unaltered without any further delay;

"When one conveys a false impression by disclosure of some facts and the concealment of others, such concealment is in effect a false representation that what is disclosed is the whole truth." **State v. Coddington, 662 P.2d 155, 135 Ariz. 480. (Ariz. App. 1983).**

"Suppression of a material fact which a party is bound in good faith to disclose is equivalent to a false representation." **Leigh v. Loyd, 244 P.2d 356, 74 Ariz. 84. (1952).**

"When one conveys a false impression by disclosure of some facts and the concealment of others, such concealment is in effect a false representation that what is disclosed is the whole truth." **State v. Coddington, 662 P.2d 155, 135 Ariz. 480 (Ariz. App. 1983).**

"Concealing a material fact when there is duty to disclose may be actionable fraud." **Universal Inv. Co. v. Sahara Motor Inn, Inc., 619 P.2d 485, 127 Ariz. 213. (Ariz. App. 1980).**

Clearly in the instant case Respondents have knowingly and intentionally conveyed false impressions and representations by disclosing some of the facts while concealing and suppressing others;

For Example:

- a) BUI Hauling Logs dated 6/7 to 6/8 and Invoices 8803 and 8811 double charged for one load and shows 6160 gallons missing and charged to MDC; Furthermore, the invoice and BUI Hauling Log indicate that 71,500 gallons was hauled when in reality the meter reading show that only 60,398 gallons was hauled a difference of 11,102 gallons but MDC was charged for the 71,500 gallons between Invoices 8803 and 8811 and hauling;
- b) BUI Hauling Log dated 7/3/11, Invoice No. 8808 shows 13,100 gallons missing and charged to MDC;
- c) BUI Hauling Logs are not disclosed for Invoice No.8815 which indicates water was hauled between 8/4 and 8/5/2011;
- d) BUI Hauling Logs dated 8/6 to 8/7/2011 are not accompanied by an Invoice;
- e) Invoice No. 8816 is for the hauling period 8/11 to 8/12/11. Respondents sent only the BUI Hauling Log of 8/11/11 and concealed the existence of the hauling log for 8/12/11;

ACC Staff provided the Complainants with the BUI Hauling Log for 8/12/11 which clearly shows that water was hauled from the TOP to the EVP System and charged to the Customers of the MDC System (EMPHASIS ADDED). By comparing both the 8/11 and 8/12 logs it becomes clearly evident that the Customers of the MDC System were billed for 23,800 gallons of water that they did not receive and that was hauled to the EVP System;

- f) BUI Hauling Logs dated 8/24 to 8/25 Invoice No. 8819 shows 1,000 gallons missing and charged to MDC;
- g) BUI Hauling Logs dated 8/30/11 has no Invoice;
- h) Invoice No.8822 allegedly for hauling dates 8/31 to 9/1/11 has no BUI Hauling Log;
- i) BUI Hauling Log dated 9/5/11 Invoice No. 8823 shows 24,000 gallons missing and charged to MDC;
- j) BUI Hauling Logs dated 9/28 Invoice No. 8825 shows 5,900 gallons missing and charged to MDC;
- k) There are numerous unexplained breaks in the sequence of "invoice numbering" that need to be fully examined and investigated. The Invoices No. 8805, 8806, 8809, 8810, 8813, 8814, 8817, 8818, 8820, 8821, 8824 and several "BUI Hauling Logs are missing for particular Invoices as well as the Invoices previously listed. These documents and records must be disclosed per the Subpoena;
- l) Martin Zabala was served with a Subpoena on March 16, 2012 to date he has failed and refused to comply with the Subpoena and is in contempt of the Commission;
- m) Pearson water avoided service of process since March 23, 2012 and was recently served with the Subpoena on April 14<sup>th</sup> 2012 after 17 attempts;
- n) There is no fiction in believing and further proving MDC Customers were charged for water hauled to the EVP System as Respondent Hardcastle would mislead the Commission believe.

It is a cold, hard, true fact that MDC Customers were charged for water hauled to the EVP System from the TOP and as the evidence will reveal from MDC to EVP (allegedly empty tankers don't leak water).

The missing Invoices and Hauling Logs must be disclosed unaltered for a thorough investigation thereof and the Respondents, particularly Hardcastle must be restrained from any further misrepresentation, deception and delays. If the Respondents have nothing to hide then why have they refused to disclose the real truth and facts by refusing to make full disclosure of documents and records?

- 4) Complainants' properly responded pursuant to ARCP, Rules 37(a), 45(c)(5)(B)(ii)(iii) and 45(f)(g) to compel compliance with the Subpoena and requested a Order be issued;
- 5) Complainants Supplemented the Original Pleading with additional evidence (in Exhibits) to support their position and objection to Respondent's Motion to Modify the Subpoena.

Those evidentiary Exhibits prove beyond any reasonable doubt that; a) MDC Customers did not receive all of the water hauled from TOP; b) water was hauled to the EVP System and MDC Customers were unlawfully charged for that water and hauling; c) water was hauled from MDC to the EVP System;

- 6) It is true that the Complainants' do not know the total amount of water that was bought from TOP, hauled to the EVP System and billed to MDC System Customers. To date we can prove and have shown (See: Exhibits submitted with the Original Pleading and the Supplemental Pleading) that according to BUI Hauling Logs and Pearson Invoices a minimum of 84,943 gallons is missing and that 23,800 gallons is confirmed to have been hauled to the EVP System and billed MDC Customers and there may be much, much more than we already know.

"Fraud" may be committed by a failure to speak when the duty of speaking is imposed as much as by speaking falsely." **Batty v. Arizona State Dental Board, 112 P.2d 870, 57 Ariz. 239. (1941).**

"Fraud and deceit may arise from silence where there is a duty to speak the truth, as well as "from speaking an untruth." **Morrison v. Acton, 198 P.2d 590, 68 Ariz. 27 (Ariz. 1948).**

All one needs to do is inspect the Exhibits submitted by the Complainants with both the Original Pleading and the Supplement to the Original Pleading to realize that the Complainants' pleadings are not filled with unproven allegations, accusations and colorful characterizations of PWC and its officers as the Respondents deceitfully misrepresent. The evidence submitted contains hard cold facts based on discovered evidence that is undeniable and fatal to the Respondent's defense and pleadings to Modify the Subpoena.

Production of the documents, records and books related to any and all amounts of water hauled to the EVP System whether from the TOP or MDC are extremely relevant, vital and necessary to the issues contained in the Complaint and cannot arbitrarily be dismissed at the Respondent's whim;

Respondent Hardcastle is running scarred because he has defrauded the Complainants, all MDC Customers and the Commission by and through his fraudulent business practices and schemes for his

Corporations' benefit, profit, gain and unjust enrichment in violation of Arizona Statutes dealing with business frauds and racketeering found in Title 13, Chapters 22 and 23. He can't afford to disclose the documentation subpoenaed because it exposes him and his Companies Consumer and Tax Fraud.

"Damages will lie in proper case of negligent misrepresentation of failure to disclose." **Van Buren v. Pima Community College Dist. Bd.**, 546 P.2d 821, 113 Ariz. 85 (Ariz.1976).

"Where one under duty to disclose facts to another fails to do so, and other is injured thereby, an action in tort lies against party whose failure to perform his duty caused injury." **Regan v. First Nat. Bank**, 101 P.2d 214, 55 Ariz. 320 (Ariz. 1940).

"The definition of **"willfully"** in §1-215 (36) is equivalent to the definition of **"knowingly"** given in § 13-105, paragraph 6. If acting knowingly (and by definition willfully) suffices to establish an element of a crime, that element is also established by evidence that a person acts intentionally. Thus, a definition which states that willfulness can be proven by evidence of intentional behavior does not constitute error." **State v. Gendron**, 166 Ariz. 562, 804 P.2d 95 (Ct. App. 1990), **reversed in part on other grounds**, 168 Ariz. 153, 812 P.2d 626 (1991).

"Where relation of trust or confidence exists between two parties so that one places peculiar reliance in trustworthiness of another, latter is under duty to make full and truthful disclosure of all material facts and is liable for misrepresentation or concealment." **Stewart v. Phoenix Nat. Bank**, 64 P.2d 101, 49 Ariz. 34. (Ariz. 1937).

Complainants have offered verified evidence as to why the Subpoena should not be Modified and why Respondents must be compelled by the Commission to fully comply with it.

The documentation requested by Subpoena as it relates to the East Verde Park (EVP) System is not overly broad in scope or burdensome to the Respondents in any way shape or form.

It is extremely relevant to the issues before the Commission and disproves all of the Respondents defenses in these matters and clearly demonstrates Respondents activities to conceal the real truth and facts in these matters to avoid sanctions by the Commission and criminal prosecution for the criminal activities the Respondents and their associates have participated in which have inflicted injury and harm upon every MDC Customer.

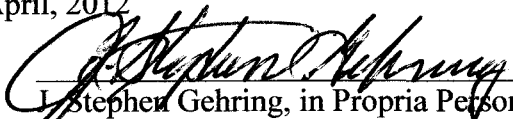
Respondent Hardcastle's total denial of any liability or wrongdoing by himself, his agents or other parties involved in the matters before the Commission is so offensive and ridiculous it warrants serious observation of the Hardcastle's psychological profile and serious consideration should be given to the fact that he may very well be a classic sociopathic liar by true definition.

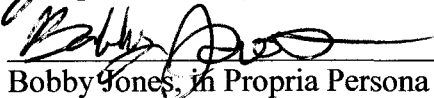
**WHEREFORE**, Complainants respectfully request of the Commission and the Administrative Law Judge not to exclude any references or document production related to the EVP System from the Subpoena and respectfully request that the Respondents Motion to Modify the Subpoena be denied for the reasons stated herein and above and in all prior pleadings and the supplements thereto.

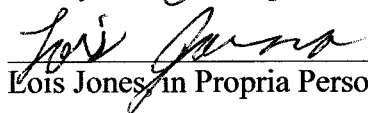
Complainants' further Motion the Commission and its Administrative Law Judge to Compel the Respondents and each of them (i. e. Robert T. Hardcastle, Brooke Utilities Inc., and Payson Water Co. Inc.) by Order, to fully comply with the Subpoena Decus Tecum received by them immediately and that they and each

of them are to provide the documentation requested without alteration, falsification, editing, omission or elimination of any single document or record.

**Respectfully submitted** this 16<sup>th</sup> day of April, 2012

  
Stephen Gehring, in Propria Persona

  
Bobby Jones, in Propria Persona

  
Lois Jones, in Propria Persona

#### **CERTIFICATE OF SERVICE**

The Original and 13 copies of the foregoing Motion have been mailed this 16<sup>th</sup> day April, 2012 to the following:

DOCKET CONTROL  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Copies of the foregoing Motion have been mailed this 16<sup>th</sup> day April, 2012 to the following:

Ernest G. Johnson  
Executive Director  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Bobby and Lois Jones  
7325 N. Caballero Rd.  
Payson, Az. 85541

Robert T. Hardcastle  
P. O. Box 82218  
Bakersfield, Ca. 93380

By:  \_\_\_\_\_